

## 46 Am. Jur. 2d Judges § 46

American Jurisprudence, Second Edition | February 2022 Update

### Judges

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### VI. Privileges, Exemptions, and Disabilities

#### B. Practice of Law

## § 46. Prohibition against judge's practice of law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  20, 21

### A.L.R. Library

[Propriety and permissibility of judge engaging in practice of law, 89 A.L.R.2d 886](#)

### Forms

Forms relating to termination or withdrawal of attorney due to judgeship, generally, see Am. Jur. Legal Forms 2d, Judges [\[Westlaw®\(r\) Search Query\]](#)

Usually, by virtue of a statutory provision<sup>1</sup> or a rule of court,<sup>2</sup> a judge of a court of record is prohibited from practicing law. The bar against the practice of law by judges may exist even in the absence of statute.<sup>3</sup> The bar extends to the practice of law in or out of court, directly or indirectly.<sup>4</sup> However, a state court judge has a constitutional right under the Sixth Amendment to represent himself in a criminal proceeding.<sup>5</sup>

Statutes which prohibit retired judges from practicing law in federal courts, in order to receive retirement benefits, violate due process.<sup>6</sup>

A judge may engage in the practice of law without violating the code of judicial conduct where, although the judge has received a commission, the judge has not yet taken the oath of office,<sup>7</sup> or where the prohibition applied only to full-time judges and thus the statute authorizing per diem judges to practice law did not violate the constitution.<sup>8</sup> However, the actions of a county judge in agreeing to represent a criminal client, signing a contract for representation with the client and the client's father, interviewing the client, arranging for substitute counsel to appear on the judge's behalf at the client's bond hearing, attending such hearing, and obtaining papers necessary to secure bond at the conclusion of the hearing, all occurring prior to the expiration of the judge's term of judicial office, amounted to the unauthorized practice of law while still a judge, in violation of the code of judicial conduct.<sup>9</sup>

**Observation:**

A judge's conduct in including a link to the website of the judge's private law office on the judge's personal website that was used during the judge's election campaign did not violate the code of judicial conduct canon that prohibited a judge from using the prestige of judicial office to advance the private interests of the judge; as part-time probate court judges such as the judge were allowed to maintain a private law practice, the judge provided the link to the website of the private law office for the purposes of eliminating confusion within the general public and preventing instances where a person who wanted to contact the judge in his capacity as a lawyer mistakenly contacted the probate court.<sup>10</sup>

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**Footnotes**

- 1 28 U.S.C.A. § 454.
- 2 *Collins v. Godfrey*, 324 Mass. 574, 87 N.E.2d 838 (1949).
- 3 *In re Sisemore*, 271 Or. 743, 534 P.2d 167 (1975).
- 4 *Bassi v. Langloss*, 22 Ill. 2d 190, 174 N.E.2d 682, 89 A.L.R.2d 881 (1961).
- 5 *U.S. v. Martinez*, 1984-NMSC-072, 101 N.M. 423, 684 P.2d 509 (1984).
- 6 *State v. McMillan*, 253 Ga. 154, 319 S.E.2d 1 (1984).
- 7 *Reed v. Sloan*, 25 Pa. Commw. 570, 360 A.2d 767 (1976), judgment aff'd, 475 Pa. 570, 381 A.2d 421 (1977).
- 8 *Application of Ferguson*, 74 Haw. 394, 846 P.2d 894 (1993).
- 9 *In re Henson*, 913 So. 2d 579 (Fla. 2005).
- 10 *In re Nadeau*, 2016 ME 116, 144 A.3d 1161 (Me. 2016).

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